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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/643,195	08/21/2000	Norbert Ohlenbusch	P0663/7021	8707

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EXAMINER

VO, HIEN XUAN

ART UNIT PAPER NUMBER

2863

DATE MAILED: 10/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Applicati n No.

09/643,195

Applicant(s)

OHLENBUSCH ET AL.

Examiner

Hien X. Vo

Art Unit

2863

-- The MAILING DATE of this communication appears on th cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 21 August 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) 1-77 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-77 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 October 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.7, 10, 11.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement (IDS) submitted on 08/09/2001, 03/15/2002, 01/06/2003 and 03/06/2003 . The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

### ***Specification***

2. On page 1 of the specification, applicant is required to update the current status of the parent applications. Correction is required.
3. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because it is too long not in within the range 50 to 150 words. Correction is required. See MPEP § 608.01(b).

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 1 rejected under 35 U.S.C. 102(b) as being anticipated by Karr et al. (U.S. Patent No. 4,371,945).

With respect to claim 1, Karr et al. disclose an electronic pedometer including a display screen to visual display characters (see e.g. Fig.1), a base support the display screen and housing electronic circuitry associated with the display screen, a strap attached to the base and adapted to secure the base to the wrist of the user (see e.g. col. 5, lines 8-26), the display screen is disposed a first distance, second distance (see e.g. col. 5, lines 27-38).

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting

directly or indirectly from an international application filed before November 29, 2000.

Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 7-22, 25, 28-73 and 76-77 rejected under 35 U.S.C. 102(e) as being anticipated by Seiple et al. (U.S. Patent No. 6,032,108).

With respect to claim 7, Seiple et al. disclose a sports performance computer system and method including at least one device supported by a user while the user is in locomotion on foot (see e.g. abstract), determining respective values of at least first and second parameters selected from a group consisting of: and instantaneous pace of the user (see e.g. col. 4, lines 44-49), an average pace of the user (see e.g. col. 11, lines 25-29), and a distance traveled by the user (see e.g. col. 6, lines 53-57), displaying visually-perceptible information indicative of the determined valued of the at least first and second parameter (see e.g. col. 6, lines 24-38).

With respect to claims 8-10, Seiple et al. disclose the invention as claimed including the first and second parameters include the instantaneous pace, the average pace, the distance travel by the user (see e.g. col. 6, lines 53-63, col. 7, lines 34-41).

With respect to claims 11-14, Seiple et al. disclose the invention as claimed including at least one device determine respective indicative value of the pace, average pace and the distance traveled by the user (see e.g. col. 5, lines 5-12), displaying visually-perceptible information indicative the instantaneous pace, average pace and distance travel by the user (see e.g. col. 6, lines 53-67), displaying the visually-perceptible information with at least one device (see e.g. col. 5, lines 12-14),

determining the respective values with the first device and displaying the visually-perceptible information with the second device (see e.g. col. 6, lines 24-38), and attaching the second device to a wrist of the user (see e.g. col. 6, lines 32-35).

Claims 15-22, 25 and 28-39 are method claims corresponding to apparatus claims 7-14. Therefore, claims 15-22 and 29-39 are rejected for the same rationales set forth for claims 7-14.

With respect to claim 40, Seiple et al. disclose the invention as claimed including at least one sensor to determine respective values of the user in locomotion (see e.g. col. 8, lines 54-61), a visually display device (see e.g. col. 6, lines 24-30).

With respect to claims 41-46, Seiple disclose the invention as claimed that the parameters include the instantaneous, average pace and distance traveled by the user (see e.g. col. 4, lines 44-49, col. 11, lines 25-29 and col. 6, lines 53-57), the device is adapted to be attached to a wrist of the user (see e.g. Fig. 1a).

With respect to claims 47-73 and 76-77, the limitations of these claims have been noted in the rejection above. They are therefore considered rejected as set forth above.

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 2-6 rejected under 35 U.S.C. 103(a) as being unpatentable over Karr et al. (U.S. Patent No. 4,371,945).

With respect to claims 2-6, Karr et al. disclose the invention as claimed except for teaching the first distance is at least 5%, 10%, 25%, 50% greater than the second distance and at least twice as great as the second distance. However, Karr et al. disclose an electronic pedometer based on the processor and display module that is capable of simultaneously displaying two variable (see e.g. col. 5, lines 27-38). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to program the microprocessor of the electronic pedometer of Karr et al. to display the first distance at least 5%, 10%, 25%, 50% greater than the second distance and at least twice as great as the second distance because these fabrication processes are well known to those skilled in the computer art.

9. Claims 23-24 and 26-27 rejected under 35 U.S.C. 103(a) as being unpatentable over Seiple et al. (U.S. Patent No.6,032,108) and further in view of Sham et al. (U.S. Patent No.5,891,042).

With respect to claims 23-24 and 26-27, Seiple et al. disclose the invention as claimed including a process device, displaying the visually information device and attaching to a wrist of the user (see e.g. Figs. 1a-1c), except for teaching a device to determine the value of heart rate. However, Sham et al. disclose a fitness monitoring device having an electronic pedometer and a wireless heart rate monitor including a heart rate receiver, pedometer sensing circuit and a visually display (see e.g. Fig.1-3). Therefore, it would have been obvious to one of ordinary skill in the art at the time the

invention was made to incorporate the teaching of Sham et al into that of Seiple thus making it possible to provide the user with physiological information concerning their exercise level while at the same time providing empirical information with respect to the duration and extent of a workout.

Claims 74-75 are method claims corresponding to apparatus claims 23-24 and 26-27. Therefore, claims 74-75 are rejected for the same rationales set forth for claims 23-24 and 26-27.


### ***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hien X. Vo whose telephone number is (703) 308-5253. The examiner can normally be reached on M-F (8:00-5:30) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow can be reached on (703) 308-3126. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

Hien Vo  
September 29, 2003

  
John Barlow  
Supervisory Patent Examiner  
Technology Center 2800